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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,957	02/18/2005	Robert Petrosenko	HLR.0112P-US	1060
660404 7590 07/26/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVENUE SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
07/26/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AOPATENT@FULBRIGHT.COM

Office Action Summary

Application No.

10/524,957

Applicant(s)

PETROSENKO ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-16, 19, 23-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 9-12, 19, 23-25 and 27 is/are allowed.
- 6) ☒ Claim(s) 13-16, 19, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/7/10 (2)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 6, 2010 have been fully considered but they are not persuasive. As to the argument that the combination of Gibertoni and Lockwood would render Gibertoni unsatisfactory for its intended purpose, while the primary means of drainage effected by the Gibertoni device is capillary action, this fact alone does not exclude the device from use with a vacuum source and tube connecting the source to the dressing and it is still the examiner's position that: 1) the Gibertoni insert is fully functional for use with a vacuum source and 2) the Lockwood device, if detached from the vacuum source, would also drain via capillary action. Thus the combination is still valid and the rejection under 35 U.S.C. 103 of claims 13-16, 19, 28 and 29 is maintained.

Information Disclosure Statements

2. The information disclosure statements (IDS) submitted on April 1, 2010 were filed after the mailing date of the non-final action on February 25, 2010. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 13-16, 19, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibertoni (EP 1,190,732 A1) in view of Lockwood *et al.* (WO 02/43634 A2).

With respect to **claim 13**: Gibertoni discloses a wound insert considered herein to be fully functional for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage and a wound surface of the wound, the wound insert comprising the following: a body 10 made of a generally non-porous, flexible material, namely silicone, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body (Fig. 4), and further wherein the body includes a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body. (Fig. 4) (whole document)

With regard to the limitation "for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage

and a wound surface of the wound", the insert of Gibertoni is fully functional for use with any vacuum bandage because it meets all of the structural and functional limitations of claim 1. However, patentable weight is given to the limitations in the preamble herein, and Gibertoni does not disclose a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source. Lockwood discloses a vacuum bandage that includes a wound dressing member 20 coupled to a wound, a port 26 of the wound dressing member 20 and a tube 13 coupled to the port and to a vacuum source. Lockwood discloses in Fig. 27 a tunneling wound and a cylindrical wound dressing member, thus it is the examiner's position that the wound dressing member 20 would be suitable for use with the insert of Gibertoni. Further, both the wound dressing and the Gibertoni insert provide pathways for suction drainage which facilitate quicker drainage and wound healing. Therefore, it would be obvious to one of ordinary skill in the art to use the insert of Gibertoni with the wound dressing of Lockwood in a tunneling wound with a reasonable expectation of success to facilitate quicker drainage and wound healing, wherein the insert of Gibertoni is placed in the wound cavity between the wound dressing member and the surface of the wound.

With respect to **claim 14**: As can be seen in Fig. 1 of Gibertoni, the body 10 is generally rod-shaped.

With respect to **claim 15**: Applicant has not clearly and explicitly defined the bounds of the recited range "approximately 0.0925 inch (2.35 mm)", therefore the claim is given its broadest reasonable interpretation. Gibertoni discloses a diameter of 2.3 mm, which is considered herein to satisfy the limitation of "approximately 0.0925 inch (2.35 mm)."

With respect to **claim 16**: The body 10 disclosed by Gibertoni includes discrete passageways 12. ([0020], col. 3)

With respect to **claim 19**: The body 10 disclosed by Gibertoni is made of a generally non-adhesive material, namely silicone.

With respect to **claim 28**: The body 10 disclosed by Gibertoni is hollow to define a central conduit therethrough that is divided into four channels 12.

With respect to **claim 29**: The body 10 further defines passageways, surface slits 15, formed through the body to communicate with the central conduit. ([0020], col. 3)

Allowed Claims

6. Claims 1-7, 9-12, 23-25 and 27 are allowed.

Reasons for Allowance

7. The examiner's statement of reasons for allowance can be found in the non-final action mailed February 25, 2010.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761